IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No. 444 of 2000

Date of Decision : 27.9.2007

State of H. P. …Appellant.

Versus:

Paras Ram …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant: Mr. M. A. Khan, Addl. A. G.

For the respondent : Mr. Virender Rathore, Advocate.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 18.3.2000 passed by the Judicial Magistrate Ist Class (II), Dharamshala, Distt. Kangra, in Criminal Case No. RBT 20-II/99/97, titled as State v. Paras Ram, acquitting the accused of the charged offence u/s 324 of the Indian Penal Code.

As per the case of the prosecution, on 11.7.1999 the accused gave a blow at the back of the head of his brother, complainant Shri Jagdish Chand, with a darat (sharp edged weapon like a sickle) thus injuring him. Smt. Sheela Devi (PW-2) wife of Shri Purshotam, sister-in-law of both the accused and the

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

complainant intervened and rescued the complainant and also took the darat from the accused. Statement of the complainant u/s 154 Cr.PC (Ext.PW-1/A) was recorded on the basis of which FIR No. 216/97 dated 12.7.1997 u/s 324 & 323 IPC (Ext.PW-7/F) was registered with Police Station, Dharamshala. Investigation was carried out by SI Dilay Ram (PW-7) who got the site plan (Ext.PW-7/A) prepared. Vide seizure memo Ext.PW-1/A, the darat Ext.P-1 and Banyan Ext.PW2 were seized. Shri Jagdish Chand (PW-1) was got medically examined at Zonal Hospital, Dharamshala and his MLC Ext.PW-3/A was also collected by the Investigating Officer. Statements of the witnesses u/s 161 Cr.PC were recorded and after completion of the investigation, the challan was presented in the Court for trial.

The provisions of Section 207 Cr.PC, were complied with and the accused was charged for an offence u/s 324 IPC. In all, the prosecution examined 7 witnesses and statement of the accused u/s 313 Cr.PC was also recorded.

After examining the evidence and also the material on record, the Court acquitted the accused of the charged offence on the ground that the prosecution failed to prove its case; there were contradictions in the statements of the witnesses and no independent witness was associated with the investigation or examined during trial.

Shri Jagdish Chand (PW-1) is the complainant and Smt. Sheela Devi (PW-2) is the sister-in-law of both PW-1 and the accused and is an eye witness. Dr. Alok Singh (PW-3) and Dr. J. K. Azad (PW-4) are the persons who have examined PW-1 and proved the injuries on his body. Shri Shubhkaran (PW-5) and Shri Budhi Singh (PW-6) are the independent witnesses who have witnessed the recovery of the darat Ext.P1 and banyan Ext.PW2. They have been declared hostile and in any case not supported the case of the prosecution. Shri Dilay Ram (PW-7) is the I.O. who had carried out the investigation.

PW-5 and PW-6 have been declared hostile and have not supported the case of the prosecution at all. According to them, no recovery was effected in their presence and the police had only obtained their signatures on the papers. Dr. Alok Singh (PW-3) who examined PW-1 has stated that as per M.L.C. Ext.PW-3/A, Shri Jagdish Chand (PW-1) was having three separate injuries and at the time of medical examination was under the influence of liquor. He has also admitted that the injury No.1 could be caused by a fall on sharp object and injuries No.2 & 3 could be caused by a fall.

In this background, the statements of PW-1 & PW-2 need to be examined. It has come on record that the accused and PW-1 & PW-2 are near relations and are co-owners of agricultural land which was being tilled at the instance of the accused by a third person. This has been because of the dispute.

PW-2 has stated that she does not have good relations with the accused. In defence, the accused has stated that his relations are inimical with the complainant and, therefore, he has been falsely implicated.

PW-1 has stated that the accused gave only one darat blow and he was rescued by the people who were present at the place of occurrence whereas PW-2 has stated that none was present and in fact she had rescued PW-1 from the accused and had also taken darat from the accused. Thus, there are material contradictions in the statements of PW-1 & PW-2. Further, the likelihood of PW-1 getting injuries by fall is not ruled out as is clear from the version of PW-3 who has stated that PW-1 was under the influence of liquor. If the accused had given a single blow of darat then the other injuries on his body are unexplainable.

Keeping in view the totality of the circumstances, in my view, the Court below has correctly appreciated the evidence as also the material on record to arrive at its conclusion.

I see no reason to interfere with the findings and conclusions of the Court below and the appeal is accordingly dismissed. Bail bonds stand discharged.

(Sanjay Karol), J.

September 27, 2007
(rana)